



CROSS-BORDER COMPARATIVE ADVERTISING: LEGAL FRAMEWORK AND POLICY REFORMS IN INDIA

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ABSTRACT

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Comparative advertising is a powerful marketing tool that allows businesses to emphasize the advantages of their products over competitors. This research paper explores comparative advertising with an emphasis on international perspectives and the influence of Indian judicial precedents. In today's globalized market, cross-border advertising campaigns are common, necessitating a deeper understanding of varying legal frameworks across jurisdictions. The study examines regulatory systems and enforcement mechanisms in countries such as the United States, the European Union, and India, highlighting divergent legal philosophies and enforcement strategies. A key focus of the research is on India's evolving legal landscape shaped by landmark judicial decisions. These cases have contributed to the development of a nuanced legal framework that balances the interests of advertisers, consumers, and competitors. The study critically analyzes these precedents, identifying ambiguities and emerging challenges. Furthermore, the paper investigates the impact of technological advancements and the rise of social media on comparative advertising practices. It offers insights into how digital marketing strategies have evolved and how legal systems are responding to these changes. The research ultimately provides valuable insights for businesses, policymakers, and legal practitioners, fostering a more harmonized approach to global advertising standards.

KEYWORDS: *Comparative Advertising, Advertising Regulations, Cross-Border Marketing, Global Advertising Standards, Advertising Ethics*

1. INTRODUCTION

Comparative advertising is a widely used marketing strategy where businesses highlight their products' merits by comparing them with competitors' offerings. This approach can involve direct or indirect comparisons and is often used to influence consumer purchasing decisions. While it provides valuable information to help consumers make informed choices, it can sometimes lead to legal challenges and intellectual property disputes if the information presented is misleading or disparages competitors. Proponents argue that comparative advertising promotes competition, enhances transparency, and empowers consumers to assess product quality. On the other hand, critics contend that it may unfairly harm competitors and mislead consumers. Comparative advertising has been defined in various ways. It involves assessing and comparing a competitor's goods or services, either explicitly or implicitly, while identifying the competitor. The Federal Trade Commission (FTC) in the U.S. defines it as advertising

that compares alternative brands based on measurable attributes or price, naming or illustrating the alternative brand. In the European Union and the U.K., it is defined as advertising that explicitly or implicitly identifies a competitor or their goods and services. The practice offers several advantages. It informs consumers by highlighting product merits, promotes market transparency, encourages healthy competition, and motivates brands to improve product quality. However, there are disadvantages as well. Comparative advertising can lead to legal disputes when it is misleading or disparaging, create brand confusion, and even harm the reputations of both the advertiser and competitors. Consumers may perceive it as unfair, especially if claims are later proven false. The impact of comparative advertising extends to competitors, advertisers, and consumers. For competitors, it can be detrimental, as it may tarnish their reputation by focusing on selective features that do not present a complete picture of their offerings. Courts often distinguish between permissible puffery

and product disparagement, emphasizing that discrediting a competitor's product quality is unacceptable. For advertisers, it provides an effective strategy for new entrants to gain market recognition by challenging established brands. By associating themselves with market leaders, lesser-known brands can attract consumer attention. However, this approach may lead to media conflicts and negative consumer perceptions. From the consumer's perspective, comparative advertising can emphasize similarities or differences between products, often focusing on portraying the advertised product as superior. This strategy leverages the reputation of established brands, providing consumers with alternatives that may offer similar features at a better price. While beneficial when done ethically, the approach must be transparent and honest to avoid misleading consumers and eroding brand trust.

2. COMPARATIVE ADVERTISING: LEGAL POSITIONS ACROSS JURISDICTIONS

2.1 Position in Common Law

Comparative advertising in common law jurisdictions can lead to legal consequences when false statements are made about a competitor's products. Legal actions may be based on torts such as defamation or disparagement. Disparagement specifically targets the quality of the plaintiff's goods, whereas defamation focuses on attacks against the plaintiff's honesty or integrity. However, not all forms of comparative advertising are actionable; some are deemed as "seller's puff" or marketing hyperbole that courts do not take seriously. The law of unfair competition also plays a role in regulating abusive advertising practices. Unfair competition can encompass elements like disparagement, "passing off," and misappropriation. Nevertheless, the criteria for what constitutes unfair competition are not always clearly defined, and historically, courts have been hesitant to allow such claims to succeed. One notable case that exemplifies the limited scope of injurious falsehood as a legal tort is *McDonald's Hamburgers Ltd. v. Burgerking (U.K.) Ltd.* In this case, Burgerking, a major hamburger chain, sought to increase its market share by targeting customers of rival chains, particularly McDonald's. Burgerking's advertisements included statements like:

- "IT'S NOT JUST A BIG MAC"
- "YOU KNOW WHEN YOU HAVE GOT A WHOPPER"
- "Like some burgers, a Whopper is big. Too big to hold in one hand. Unlike some burgers, it's 100% pure beef, flame grilled never fried, with a unique choice of toppings."

McDonald's, which heavily promoted its hamburgers as 100% pure beef, filed a lawsuit against Burgerking for injurious falsehood and trade libel. McDonald's argued that Burgerking's advertisements could mislead consumers into believing that the Big Mac was not made of 100% pure beef. However, the court

dismissed the claim, citing a lack of falsehood and an inability to establish malice. The judge emphasized that the advertisement's small print clarified that the characteristics of Burgerking's hamburger extended beyond just being 100% pure beef—other attributes, such as being flame-grilled instead of fried, also distinguished it. The court determined that the advertisement did not imply that McDonald's hamburgers were not 100% pure beef. In many cases, common law courts have treated comparative advertising as mere puffery, which is not legally actionable. Courts typically apply a "reasonable person" standard, assuming that objective and careful consumers are unlikely to take comparative advertisements seriously.

2.2 Position in the USA

The legal framework governing comparative advertising in the USA is shaped by several key principles and regulations:

(a) Lanham Act: The primary legal framework for addressing comparative advertising is the Lanham Act, specifically Section 43(a). This section prohibits false advertising, including advertisements that are likely to cause consumer confusion regarding the source or characteristics of a product.

(b) National Advertising Division (NAD) and National Advertising Review Board (NARB): The NAD and NARB are self-regulatory bodies within the advertising industry. They provide guidance and hear cases involving comparative advertising disputes. Although their decisions are non-binding, they can influence legal outcomes.

(c) Federal Trade Commission (FTC): The FTC has authority to regulate and take action against deceptive advertising practices, including comparative advertising. If the FTC determines that an advertisement is deceptive or unfair, it can initiate enforcement actions.

Comparative advertising in the USA must be truthful and not deceptive. Advertisers are permitted to compare their products with competitors', but such comparisons must be accurate and based on objective facts. Exaggeration or puffery is generally acceptable as long as it does not cross into false advertising territory. Advertisers must have a reasonable basis for their claims, supported by evidence or data. In 1979, the FTC issued its "Statement of Policy regarding Comparative Advertising." According to this policy, the FTC encourages the use of competitors' references in comparative advertising but requires clear disclosures to prevent consumer deception. Truthful comparative advertising should not face restraint by broadcasters or self-regulators. The FTC views truthful comparative advertising as essential for informing consumers, fostering rational purchase decisions, promoting product improvement, innovation, and competitive pricing. The FTC permits disparaging advertising as long as it is truthful and not

deceptive. Nevertheless, some industry codes may restrict practices such as "disparagement," "improper disparagement," and "unfairly attacking," potentially limiting comparative advertising.ⁱⁱ The legal standard often evaluates how a reasonable consumer would interpret the advertisement. If the advertisement is likely to mislead or confuse a reasonable consumer, it may face legal challenges. Advertisers may invoke defenses like the First Amendment protection for commercial speech, though these defenses may not always succeed.ⁱⁱⁱ A landmark case highlighting these issues is *Pizza Hut, Inc. v. Papa John's International, Inc.*^{iv}. The case revolved around the slogan "Better Ingredient, Better Pizza." Pizza Hut alleged that this slogan constituted false advertising under the Lanham Act. Initially, the District Court ruled in favor of Pizza Hut, but the 5th Circuit Court of Appeals reversed this decision.

The court considered whether the slogan constituted factual claims or mere puffery. It concluded that non-actionable puffery includes:

1. Exaggerated, boastful statements on which no reasonable buyer would rely.
2. General assertions of product superiority, too vague to be interpreted as anything more than opinion.

The court found that the slogans "Better Pizza" and "Better Ingredient" were general opinions about product superiority and not factual claims, making them non-actionable. The District Court's decision was reversed.

2.3 Position in the United Kingdom

The UK advertising industry operates under a system of self-regulation that complements existing laws. This approach fills legal gaps and provides an accessible means of dispute resolution compared to civil or criminal litigation. Self-regulation safeguards the integrity of advertising, promotions, and direct marketing. The importance of self-regulation is acknowledged in EU Directives, which provide clear guidance on comparative advertising compliance. In non-broadcast marketing communications, the Code of Non-Broadcast Advertising, Sales Promotion, and Direct Marketing Communications (CAP Code) governs advertising content. The Committee of Advertising Practice (CAP) establishes, updates, and enforces the CAP Code. Comparative advertising is permitted in the UK, provided it complies with the Business Protection from Misleading Marketing Regulations 2008, which replaced the Trade Description Act, 1968. These regulations prohibit businesses from misleading traders through product advertising and establish conditions under which comparative advertising is allowed. The regulations align with the EU Directive 2006/114/EC on Misleading and Comparative Advertising.^v The Consumer Protection from Unfair Trading Regulations 2008 enforce the EU Directive 2005/29/EC regarding unfair business-to-consumer

practices. These regulations prohibit unfair commercial practices and provide consumers with remedies against misleading or aggressive practices.^{vi} Consumers may seek redress through civil courts if a trader's prohibited practice significantly influenced their purchase decisions. Remedies include contract reversal, discounts, damages, and penalties.

2.4 Position in Canada

In Canada, comparative advertising is generally permitted, provided it adheres to legal and regulatory standards. Advertisements must follow truth-in-advertising principles, ensuring that claims are accurate, substantiated, and not misleading.^{vii} The Competition Act and the Canadian Code of Advertising Standards provide guidelines for comparative advertising. While the practice is allowed, advertisers must avoid disparaging competitors or their products in a false or misleading manner. Comparisons should be fair, verifiable, and presented in a way that does not deceive consumers.^{viii} Comparative advertising promotes healthy competition and consumer choice, but advertisers must be mindful of legal requirements to avoid legal issues and ensure compliance with Canadian advertising standards.

2.5 Position in Brazil

In Brazil, comparative advertising is governed by a legal framework that balances competition and consumer protection. Advertisers may engage in comparative advertising, provided it is fair and transparent. The Brazilian Consumer Defense Code mandates that comparative advertising must present accurate and truthful information. Advertisers must avoid practices that mislead consumers or disparage competitors unfairly. Maintaining compliance with these guidelines ensures that advertisers promote their products responsibly while fostering a competitive market.^{ix}

2.6. Position in India

Comparative advertising, particularly direct comparisons naming competitors, is relatively new in India. Its legal landscape is shaped by constitutional protections for commercial speech, subject to reasonable restrictions. While Indian laws do not explicitly address "comparative advertising," it often falls under trademark disputes governed by the Trade Marks Act, 1999. The Consumer Protection Act, 2019, further regulates advertising to protect consumers from deceptive practices. The Competition Act, 2002, addresses anti-competitive conduct arising from direct comparisons. India also follows a self-regulatory system led by the Advertising Standards Council of India (ASCI), ensuring fairness and transparency in advertising content.^x Comparative advertising must be honest, avoiding false or misleading claims that harm competitors' reputations. Advertisers are required to provide accurate and verifiable information to back

their claims. Disclaimers are commonly used to clarify comparisons and avoid legal challenges. Despite its advantages in fostering competition and informed consumer choices, comparative advertising remains under strict legal scrutiny in India.

3. INDIAN JUDICIARY ON COMPARATIVE ADVERTISEMENTS

The first significant Supreme Court case addressing the protection of commercial advertisements in India was *Hamdard Dawakhana v. Union of India*^{vi}. This case questioned the constitutional validity of the Drug and Remedies (Objectionable Advertisements) Act, 1954, which restricted advertisements promoting drugs with purported magical curative properties. The challenge was based on the argument that these restrictions infringed upon the freedom of speech guaranteed under Article 19(1)(a) of the Constitution. The Court ruled that while advertising is a form of speech, commercial advertisements related to trade and commerce do not fall within the ambit of Article 19(1)(a). At the time, this decision treated commercial advertising as unprotected speech. However, with the evolving economy, advertising has gained immense significance, shaping public preferences and driving market competition.

A pivotal shift towards recognizing constitutional protection for advertisements came in *Tata Press Ltd. v. Mahanagar Telephone Nigam Ltd*^{vii}. (MTNL). MTNL, a government entity, claimed exclusive rights to publish and distribute telephone directories containing advertisements. Tata Press Ltd., however, published the *Tata Press Yellow Pages*, featuring business and professional advertisements. MTNL filed a lawsuit to prevent Tata Press from publishing without permission, citing a violation of the Indian Telegraph Act. The Supreme Court emphasized that Article 19(1)(a) protects not only the freedom of speech and expression but also the right to access information. It held that commercial advertisements deserve constitutional protection under Article 19(1)(a). This judgment rejected the restrictive stance of the *Hamdard Dawakhana* case, affirming that denying Article 19(1)(a) rights to advertisements would unjustly establish government monopolies.

In *Sakal Papers (P) Ltd. v. Union of India*^{viii}, the constitutional validity of the Newspaper (Price and Page) Act, 1956, was challenged. This Act empowered the government to regulate newspaper prices based on the number of pages and control the allocation of advertising space. The Court ruled that such restrictions violated Article 19(1)(a) and hindered newspaper circulation. Similarly, in *Bennett Coleman & Co. v. Union of India*^{ix}, the Court acknowledged the importance of advertising in sustaining newspaper circulation. Restrictions on advertising, the Court held, would impair the fundamental right to propagate,

publish, and circulate information protected by Article 19(1)(a).

The case of *Reckitt and Colman of India Limited v. M.P. Ramachandran and Another*^x involved a dispute between the plaintiff, who produced the whitener 'Robin Blue,' and the defendant, who marketed 'Ujala.' The defendant's advertisement suggested that the plaintiff's product was overpriced and ineffective for whitening clothes. The advertisement depicted the plaintiff's container upside down with liquid gushing out, implying inefficiency. The plaintiff sought an injunction to restrain the defendant. The Court examined whether the advertisement merely promoted the defendant's product or disparaged the plaintiff's product. It held that while boasting about a product's superiority is permissible, implying that a competitor's product is bad constitutes defamation. The Court established principles governing comparative advertising, stating that defamation warrants an injunction.

In *Reckitt and Coleman of India Ltd. v. Kiwi TTK Ltd*^{xi}, the plaintiff, a manufacturer of liquid shoe polish under the brand "Cherry Blossom," alleged disparagement by the defendant's advertisement for "KIWI" shoe polish. The defendant's advertisement depicted a non-dripping KIWI bottle compared to a dripping "Brand X" bottle, resembling the plaintiff's product design. The Court clarified that puffery—or claiming one's goods are the best—is permissible but disparaging a competitor's product is actionable. After the removal of certain design elements, the Court found no defamation.

The case of *Hindustan Lever Ltd. v. Colgate Palmolive (India) Ltd*^{xii} involved a dispute over an advertisement by Hindustan Lever Ltd. claiming that its "New Pepsodent" toothpaste was "102% better than the leading toothpaste." Colgate Palmolive filed a complaint, leading to an interim injunction by the MRTP Commission. The Supreme Court declined to interfere with this discretionary order. Subsequently, in the *Pepsi Co. Inc. v. Hindustan Coca Cola Ltd.*, the Court emphasized guidelines for determining disparagement, stating that ridiculing a competitor's product constitutes actionable disparagement. In the advertisement at issue, the respondent's product was portrayed as superior, with a mocking slogan "Wrong Choice Baby" aimed at Pepsi. The Court restrained the respondents from airing the commercial, ruling that it crossed the line from puffery to disparagement.

In *Dabur India Ltd. v. Emami Ltd.*^{xiii}, the plaintiff, a leading manufacturer of "Dabur Chyawanprash," alleged that Emami's advertisement for "Himani Sona-Chandi Amritprash" disparaged their product. The commercial suggested that Chyawanprash was unsuitable for summer consumption, promoting Amritprash as a better alternative. The Court observed

that the advertisement implied a general dissuasion from consuming Chyawanprash, thereby affecting the plaintiff's market share. It held that even a generic reference to an entire class of products could be disparaging and granted a temporary injunction against the defendant.

In *Dabur India Ltd. v. Colgate Palmolive India Ltd.*^{xix}, Dabur, the manufacturer of "Dabur Lal Dant Manjan Powder," sought an interim injunction against Colgate Palmolive for a contentious advertisement. The ad, aired on visual media, portrayed the plaintiff's product in a negative light, leading to allegations of disparagement. The Court reinforced that while comparative advertising is permissible, making disparaging remarks about a competitor's product is actionable.

The case of *Karamchand Appliances Pvt. Ltd. v. Sri Adhikari Brothers and Ors.*^{xx} involved a dispute over comparative advertising and potential product disparagement. The plaintiff, a manufacturer of household pesticides and repellents under the trademarks "ALL OUT" and "BAYGON," objected to a television commercial aired by the defendant, who produced "GOOD KNIGHT TURBO REFILL." The commercial depicted a woman using modern home appliances, including the plaintiff's "ALL OUT Pluggy" vaporizer and refill set, implying that despite technological advancements, the approach to repelling mosquitoes was "15 years old." The woman in the advertisement subsequently promoted the defendant's product as a superior alternative.

The plaintiff contended that the commercial unfairly denigrated its product by portraying it as outdated. Initially, the Court prohibited the defendant from airing the advertisement. On appeal, the Division Bench allowed a modified version of the commercial that did not criticize the plaintiff's product. However, the plaintiff alleged that the revised advertisement still carried elements of disparagement, including the use of a similar product in the same shade of orange. The Court ultimately determined that the defendant's claims of technological superiority were factually incorrect and that the tone of the modified advertisement was still derogatory. Justice T.S. Thakur emphasized that while a defendant may promote its products, it cannot disparage the technology or offerings of a competitor. Comparative advertising is acceptable only when it refrains from undermining the reputation of rival products.

In *Godrej Sara Lee Ltd. v. Reckitt Benckiser (I) Ltd.*^{xxi}, the plaintiff, a manufacturer of pest control products under trademarks such as "GOODNIGHT," "JUMBO," and "HIT," objected to an advertisement for the defendant's "Mortein." The commercial depicted a dramatic scenario where cockroaches and mosquitoes marched toward a family, only to be

repelled by the "Mortein Aerosol Can." The plaintiff claimed that the depiction disparaged their products by suggesting they were ineffective.

The Court found no disparagement in the advertisement. The defendant merely highlighted the versatility of its product in targeting both cockroaches and mosquitoes, unlike the plaintiff's separate products for each pest. The Court underscored that there was no attempt to portray the plaintiff's products as inferior. Comparative claims that do not mislead consumers or disparage competitors' products are permissible, as they allow consumers to make informed decisions.

In *Glaxo Smith Kline Consumer Health Care Limited v. Heinz India Private Limited*^{xxii}, both companies were manufacturers of nutritional drinks—the plaintiff producing "Horlicks" and the defendant producing "Complan." The defendant's advertisement depicted a boy attempting to increase his height, followed by a claim that "Complan" had "100% more milk protein" than "Brand H," with "23 vital nutrients." The ad implied that consuming "Complan" would ensure superior height growth.

The plaintiff argued that the advertisement was misleading and disparaging, as it falsely suggested that "Horlicks" was nutritionally inferior and ineffective for growth. The Court held that the plaintiff had established a prima facie case of slander. The advertisement's portrayal of the plaintiff's product as inadequate created an impression that could mislead consumers and harm the plaintiff's reputation. The Court confirmed the interim injunction against the advertisement.

In *Colgate Palmolive (India) Ltd. v. Anchor Health and Beauty Care Private Ltd.*^{xxiii}, the plaintiff objected to a television commercial for the defendant's toothpaste "Anchor," which made four claims:

1. That "Anchor" was the only toothpaste with calcium, fluoride, and triclosan.
2. That "Anchor" was the first toothpaste offering all-around protection.
3. That it provided 30% more cavity protection.
4. That its triclosan content was ten times more effective in reducing bacteria.

The plaintiff contended that these claims were false and misleading. The Court determined that using the terms "ONLY" and "FIRST" constituted unfair trade practices under the Consumer Protection Act, 1986. The claims falsely represented the product's standard, quality, and composition. While the defendant was found guilty of disseminating false information, the Court did not find grounds for disparagement. The defendant was restrained from using the terms "ONLY" and "FIRST" in its advertisements.

In *Dabur India Ltd. v. M/S Colortek Meghalaya Pvt. Ltd.*^{xxiv}, the appellant manufactured mosquito repellent creams under the brand names “Odomos” and “Odomos Naturals.” The respondents’ advertisement for “Good Knight Naturals” suggested that traditional mosquito repellent creams caused allergies and were sticky. The advertisement portrayed “Good Knight Naturals” as a superior solution containing natural ingredients.

The Court referred to the criteria for determining disparagement outlined in the *Pepsi Co.* case: the intent of the advertisement, its overall effect, and the truthfulness of the comparison. The Court emphasized that advertisers must not be overly sensitive to competition. Ultimately, the Court found no disparagement in the advertisement, rejecting the appeal for an injunction. However, it highlighted that false, misleading, or deceptive advertisements are not protected as commercial speech.

Finally, in *Colgate Palmolive (India) Ltd. v. Hindustan Unilever Ltd.*^{xxv}, the plaintiff objected to the defendant’s advertisements for “Pepsodent Germicheck Superior Power” (Pepsodent GSP). The TV commercial compared “Colgate Dental Cream Strong Teeth” (Colgate ST) unfavorably to “Pepsodent GSP,” depicting a questionable “preventive cavity test.” The Court found that the defendant’s advertisement was misleading and unfairly portrayed the plaintiff’s product as inferior.

In *Marico Limited v. Adani Wilmar Limited*^{xxvi}, the plaintiff, Marico, marketed cooking oil under the trademark ‘Saffola,’ which had four different variants. The defendant promoted its product ‘Fortune RBO’ as exclusively containing rice bran oil (RBO). Marico sought an interim injunction against advertisements that allegedly disparaged its product by claiming that Fortune RBO was the world’s healthiest oil, superior to Saffola. The court found that the advertisements highlighted the benefits of RBO without explicitly denigrating Saffola. The plaintiff’s product was unnamed in electronic media, and factual claims in print ads regarding Oryzanol content and pricing were not proven false. Emphasizing a pragmatic approach, the court ruled that as long as the advertisement’s message was not entirely untrue, there was no actionable disparagement.

In *Havells India Ltd. v. Amritanshu Khaitan*^{xxvii}, the plaintiff sought to restrain the defendant’s comparative advertisement promoting ‘Eveready LED Bulb’ over Havells’ product. The advertisement urged consumers to “check lumens and price before you buy.” Havells contended this disparaged its brand and misled consumers. The court, however, upheld the principles of the Trade Marks Act, 1999, and ASCI code, which encourage healthy competition and allow comparative advertising if truthful and verifiable. The court found

no evidence of misleading claims or denigration, emphasizing that highlighting product distinctions is permissible. Accordingly, the plaintiff’s application was dismissed, reinforcing the importance of protecting competitive advertising while ensuring consumer awareness.

4. CONCLUSION

The rapid growth of production, fueled by technological advancements and economic development, has intensified competition among manufacturers. To capture consumer attention, businesses increasingly rely on advertising as a critical communication tool. Among various strategies, comparative advertising has emerged as a significant approach, comparing a product’s attributes with those of competitors. While this method informs consumers, it may also harm the reputation of competing products, raising concerns about its legality. Comparative advertising intersects with trademark law, as comparisons often involve the goods and trademarks representing products. In the U.S., the Lanham Act protects trademarks and guards against unfair competition. The UK’s Trade Marks Act, 1994, provides similar protections. However, India’s legal framework lacks a specific statutory provision for comparative advertising. Instead, commercial speech is protected under the Constitution, and advertising for commercial gain enjoys constitutional freedom. Comparative advertising is addressed under the Monopolies and Restrictive Trade Practices Act, 1969, as an “Unfair Trade Practice.” The Consumer Protection Act, 1986, also deals with such practices, focusing primarily on consumer welfare rather than protecting businesses. Self-regulatory mechanisms, such as the Advertising Standards Council of India (ASCI), play a pivotal role in overseeing advertising practices. However, Indian jurisprudence on comparative advertising remains unsettled, with the legal position shaped primarily by High Court decisions. Unlike the more liberal approaches in the U.S. and the UK, India’s stance emphasizes consumer protection, adopting a stricter view on puffery. A definitive Supreme Court ruling could offer much-needed clarity.

5. SUGGESTIONS

Suggestions for strengthening the legal framework governing comparative advertising in India include the introduction of a statutory definition of comparative advertising to reduce ambiguity and improve clarity. Specific conditions and requirements, similar to those in the EU Directive, should be established to ensure lawful conduct in comparative advertising. Amendments to the Trade Marks Act can adopt international standards to define terms like “honest practices in industrial and commercial matters” and provide clear criteria for determining when comparative advertising affects trademark reputation. The Competition Act should be updated to address

unfair trade practices, harmonizing laws regarding comparative advertising. Self-regulatory mechanisms like the Advertising Standards Council of India (ASCI) need enhancement, with mandatory registration for advertisers and a system for imposing fines and punitive actions for non-compliance. High Courts should consider both consumer interests and competition when deciding cases related to comparative advertising, with a focus on consumer protection and fostering healthy competition. Businesses engaged in comparative advertising should adhere to existing regulations, pre-screen advertisements, and use substantiated claims to ensure accurate product information without damaging the reputation of competing products. These suggestions aim to provide clarity, fairness, and robust protection for all stakeholders within the Indian legal system, including consumers, manufacturers, and service providers.

Draft Bill for The Cross-Border Comparative Advertising (Regulation and Protection) Bill, 2025 Preamble:

This Act seeks to regulate comparative advertising practices while safeguarding consumer interests and protecting the reputation of trademarks. It aims to promote a fair competitive environment in the Indian market and address challenges posed by cross-border comparative advertisements. By incorporating international best practices, this Act intends to provide legal clarity and ensure honest commercial practices.

Chapter I: Preliminary

This chapter defines the title, extent, and commencement of the Act. It stipulates that the Act will be called the Cross-Border Comparative Advertising (Regulation and Protection) Act, 2025, and shall extend to the whole of India, coming into force on a date notified by the Central Government. Key terms such as "Comparative Advertising," "Cross-Border Comparative Advertising," "Competent Authority," and "Trademark" are defined for clarity.

Chapter II: General Principles for Comparative Advertising

This chapter outlines permissible and prohibited practices for comparative advertising. Advertisements are permissible if they are not misleading, make verifiable comparisons, and do not denigrate competitors or exploit their trademarks. Prohibited advertisements include those that create confusion, disparage competitors, or violate relevant laws, such as the Trade Marks Act, 1999, and Consumer Protection Act, 2019.

Chapter III: Cross-Border Advertising Regulations

Advertisers based outside India targeting the Indian market must comply with this Act. Cross-border advertisements require transparency regarding the advertiser's business location and applicable jurisdiction. The Competent Authority is empowered to collaborate with international regulatory bodies for effective enforcement.

Chapter IV: Enforcement and Remedies

The Competent Authority is tasked with monitoring, investigating, and regulating comparative advertising practices. Penalties for violations include fines up to INR 50,00,000 and compensation for affected competitors. Repeat offenders may face increased penalties and advertising prohibitions. Disputes are to be adjudicated by appropriate High Courts or designated tribunals, with mediation mechanisms available.

Chapter V: Consumer Protection and Safeguards

Consumers are entitled to truthful, fair, and transparent advertising. They may seek redressal for misleading advertisements under the Consumer Protection Act, 2019, ensuring their rights are protected against deceptive practices.

Chapter VI: Amendments to Existing Laws

To strengthen the regulatory framework, amendments are proposed to the Trade Marks Act, 1999, to define "honest practices" and the impact of advertising on trademark reputation. The Competition Act, 2002, is to be amended to address unfair trade practices, including misleading comparative advertisements.

Chapter VII: Miscellaneous Provisions

Advertisers are required to register with the Advertising Standards Council of India (ASCI), which will have the authority to impose penalties for non-compliance. The Central Government is empowered to make rules for implementing the Act, with provisions to ensure that rights under existing laws are not adversely affected. Inconsistent provisions in other laws shall be modified, while prior actions remain valid.

Chapter VIII: Conclusion

This Act aims to foster a transparent and balanced advertising environment, ensuring fairness for consumers, businesses, and competitors. By promoting healthy competition in a globalized marketplace, it seeks to uphold the principles of fairness, integrity, and consumer protection.

ⁱ (1986) FSR 45

ⁱⁱ 16 CFR ss. 14.15 (1979)

ⁱⁱⁱ *Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council Inc.*, 425 U.S. 748 (1976); *Central*

Hudson Gas and Elec. v. Public Service Commission, 447 U.S. (1980)

^{iv} 227 F.3d 489 (5th Cir. 2000)

^v *The Business Protection from Misleading Marketing Regulations*, 2008, Reg. 4.

^{vi} *Consumer Protection from Unfair Trading Regulations* 2008, Reg. 3

^{vii} <https://www.torontopubliclibrary.ca/content/about-the-library/pdfs/advertising-standards.pdf>

^{viii} <https://adstandards.ca/wp-content/uploads/2018/04/guidelinesCompAdvertising-en.pdf>

^{ix} <https://www.ftc.gov/legal-library/browse/statement-policy-regarding-comparative-advertising>

^x <https://www.indialawoffices.com/legal-articles/legality-of-comparative-adovertisements-in-india>

^{xi} AIR 1960 SC 554

^{xii} 1995 SCC (5) 139

^{xiii} [1962] 3 S.C.R. 842

^{xiv} AIR 1973 SC 106

^{xv} *Ordinary Original Civil Jurisdiction* G.A. No. 261 of 1996, In C.S. No. 31 of 1996, Decided On, 24 August 1998

^{xvi} 1996 (16) PTC 393

^{xvii} 1998 (1) SCC 720

^{xviii} 2004 (29) PTC 1 (Del.)

^{xix} AIR 2005 Del. 102

^{xx} 2005 (31) PTC 1 Del.

^{xxi} 2006 (32) PTC 307 (Del.).

^{xxii} 2007 (2) CHN 44

^{xxiii} 2009 (40) PTC 653

^{xxiv} 2010 (42) PTC 88

^{xxv} 2014 (57) PTC 47 (Del)

^{xxvi} 199(2013) DLT 663

^{xxvii} 2015 (62) PTC 64 [Del]